IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2132 of 2005 (O&M)
DATE OF DECISION: 7.8.2006.

Manju

...Appellant

versus

Anil Kumar and others

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr. Justice S.D.Anand.

Present: Mr.Alok Jain, Advocate,
for the appellant
Mr.D.P.Gupta, Advocate
for respondent No.3.

UMA NATH SINGH, J.

This FAO has been preferred with an inordinate delay of 3 years and 66 days. In para Nos.3 to 5 of the application for condonation of delay, the following explanation have been furnished:-

"3. That applicant-appellant is the daughter of deceased Shri Krishan son of Shri Ratti Ram, who died in the motor accident on 04.11.2000. The mother of applicant-appellant filed a claim petition No.6 of 2001 for grant of compensation which was decided on 30.07.2001. It may be pointed out that at the time of decision by the ld. Motor Accident Claims Tribunal, Rohtak, the applicant-appellant was minor having her date of birth as 21.11.1985 and as such, was not competent to take an independent decision or act of its own.

4. That the mother of applicant-appellant being illiterate rustic lady was perhaps not aware of her right to file an appeal

against award dated 30.07.2001 passed by ld. Motor Accident Claims Tribunal, Rohtak. Besides for want of sufficient funds, the mother of applicant-appellant could not pursue the matter any further which has resulted in non-filing of the appeal within time and has caused serious prejudice to the rights of the applicant-appellant and respondents No.5 to 8, who still are minor.

5. That applicant-appellant after attaining majority came to know of the appeal having not been filed earlier in point of time by the mother of applicant-appellant only when the applicant-appellant came across the certified copy of the award dated 30.07.2001 which was applied by diary No.3761 dated 03.08.2001 and received on 09.08.2001. On enquiries thereafter, it was revealed that the mother of the applicant has not filed any further appeal against the said award which has resulted in calling serious prejudice to the rights of the applicant-appellant as also respondents No.4 to 8 herein. Thereafter, steps were taken to file the present appeal, resulting into delay of 3 years 66 days which delay is bonafide and unintentional and is not a deliberate act."

The explanation given for delay does not show sufficient cause. Moreover, in terms of ratio of a judgment of Hon'ble the Apex Court reported in AIR 1998 SC 2276 (P.K.Ramachandran versus State of Kerala and another), we cannot extend the limitation on equitable ground.

On merits also, we do not find any ground to interfere with the impugned award. The deceased was, admittedly, employed in private sector and his salary certificate was not exhibited nor is there any documentary

evidence, including bank account, to substantiate the submission of learned counsel that the deceased was earning Rs.3,000/- per month. The Tribunal has taken a reasonable view while assessing the income of the deceased as a casual labourer and has rightly deducted 1/3rd thereof and, thus, has passed an award to the tune of Rs.2,30,400/-.

Thus, this appeal is dismissed on the ground of delay as well as on merits.

(UMA NATH SINGH)
JUDGE

August 7, 2006
pk

(S.D.ANAND)
JUDGE